

**88-150**  
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**In the**  
**Supreme Court of the United States**

**OCTOBER TERM, 1983**

**In the Matter of the Liquidation  
of Kenilworth Insurance Company**

**The Honorable Philip R. O'Connor, Director of  
Insurance of the State of Illinois and Court-appointed  
Liquidator of the Kenilworth Insurance Company**  
**Petitioner**

**Versus**

**Organ and Company, Inc.**

**Respondent**

**Petition for Writ of Certiorari to  
the Louisiana State Supreme Court**

**Petition for Writ of Certiorari**

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Philip R. O'Connor, Director  
of Insurance for the State  
of Illinois, Liquidator of  
Kenilworth Insurance Company**

## QUESTIONS PRESENTED

Whether the Louisiana Court below violated the full faith and credit clause of the United States Constitution, Article IV, § 1, and its implementing statute, 28 U.S.C. § 1738, by refusing to treat an Illinois State Court's prior Judgment, already made executory in Louisiana by the same Louisiana Court, as *res judicata* and/or as applicable and controlling in Louisiana proceedings involving the same case.

Whether the constitutional issue of law in the case at bar is governed and answered by the decisions of the United States Supreme Court rendered in the matters entitled, *Underwriters National Assurance Company v. North Carolina Life and Accident and Health Insurance Guaranty Association, et al.*, 102 S.Ct. 1357, 455 U.S. 691, 71 L.Ed.2d. 558 (1982) and *Morris v. Jones, Director of Insurance of Illinois*, 329 U.S. 545 (1947); 67 S.Ct. 451.

**CERTIFICATE OF INTERESTED PERSONS**

*Parties:*

Kenilworth Insurance Company, an Illinois Stock,  
Property and Casualty Company, In Liquidation

The Honorable Philip R. O'Connor, Director of In-  
surance of the State of Illinois and Court-appointed Li-  
quidator of the Kenilworth Insurance Company

Organ and Company, Inc.

Donald V. Organ, Esq.

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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

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In the Matter of the Liquidation  
of Kenilworth Insurance Company

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Petition for Writ of Certiorari to  
the Louisiana Supreme Court

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Petition for Writ of Certiorari

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The Honorable Philip R. O'Connor, Director of Insurance for the State of Illinois and Court-appointed Liquidator of the Kenilworth Insurance Company, petitions for a Writ of Certiorari to review the Judgment of the Supreme Court of the State of Louisiana denying his Petition for a Writ of Certiorari to that Court for review of the Judgment of the Fifth Circuit Court of Appeals, State of Louisiana. The refusal of the writ application by the Supreme Court of the State of Louisiana had the effect of denying full faith and credit to a valid Judgment of the State of Illinois, which Judgment sought to marshal and centralize before one forum all of the assets, liabilities and/or claims against an Illinois insurance company in liquidation pursuant to Illinois law.

**OPINIONS BELOW**

The Agreed Order of Liquidation with a Finding of Insolvency, Circuit Court of Cook County, Illinois, No. 82 CH 3081, is attached (Appendix A). The Judgment of the

24th Judicial District Court for the Parish of Jefferson, State of Louisiana, dated April 23, 1982, making executory the Illinois Court Order of Liquidation, is attached (Appendix B). The Judgment of the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, dated May 26, 1982, is attached (Appendix C). The Judgment of the Fifth Circuit Court of Appeals, State of Louisiana, is attached (Appendix D). The denial of rehearing by the Fifth Circuit Court of Appeals is attached (Appendix E). The denial of Writ of Certiorari by the Louisiana State Supreme Court is attached (Appendix F).

## JURISDICTION

The Agreed Order of Liquidation with a Finding of Insolvency, Circuit Court of Cook County, Illinois, No. 82 CH 3081, (Appendix A), was entered by the Illinois Court on April 20, 1982. The Judgment of the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, making executory the aforesaid Illinois Court's Order of Liquidation, (Appendix B), was entered by the Louisiana Court on April 23, 1982. The Judgment of the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, declining full faith and credit application of the Illinois Judgment made executory in Louisiana, (Appendix C), was entered on May 26, 1982. The Judgment of the Fifth Circuit Court of Appeals, State of Louisiana, upholding the Louisiana district court's action, (Appendix D), was entered on March 8, 1983; and rehearing was denied by that state appellate court on April 18, 1983, (Appendix E). On June 17, 1983, by a 5-2 vote, the Supreme Court of the State of Louisiana declined to grant a Writ of Certiorari or of review (Appendix F).

Jurisdiction is conferred on this Court by 28 U.S.C.

§ 1257.

## CONSTITUTIONAL PROVISIONS INVOLVED

The United States Constitution, Article IV § 1, provides in pertinent part that:

"Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

## STATEMENT OF THE CASE

The issues presented by this case arise under the full faith and credit clause of the United States Constitution, Article IV, § 1, and its implementing statute, 28 U.S.C. § 1738.

On April 20, 1982, the Circuit Court of Cook County, Illinois in proceedings numbered 82 CH 3081 on the docket of that Court, found the Kenilworth Insurance Company, an Illinois insurance company, to be insolvent, and placed it in liquidation pursuant to Illinois law. The Illinois Court further authorized the Director of Insurance for the State of Illinois, the Honorable Philip R. O'Connor (applicant herein), in his capacity as Court-appointed Liquidator, to immediately take possession of the property, business and affairs of the Company, and vested the Liquidator with title to all property, contracts and rights of action of the Kenilworth Insurance Company. The Illinois Court's Agreed Order of Liquidation with a Finding of Insolvency further provided, in paragraphs C, D and F thereof, as follows:



"C. That the Director has the right, title and interest in all funds recoverable under treaties and agreements of reinsurance heretofore entered into by the Company as the ceding insurer, and that all reinsurance companies involved with the Company be and the same hereby are restrained from making any settlements with any claimant or policyholder other than the Director as Liquidator."

"D. That all banks, brokerage houses, agents, reinsurers or other companies or persons having in their possession assets which are or may be the property of the Company are enjoined from disposing of such assets or destroying any records pertaining to any business transaction between the Company and banks, brokerage houses or other persons or companies having done business with the Company or having in their possession assets which are or were the property of the Company."

*"F. That all persons be and are hereby enjoined and restrained from asserting any claim against the Director, as Liquidator, arising out of or in connection with these liquidation proceedings, or the Company, except insofar as such claims are brought in the liquidation proceedings of the Company."* (emphasis added)

On April 23, 1982, upon the petition of the Illinois Director-Liquidator filed in proceedings numbered 266-076 on the docket of Louisiana's 24th Judicial District Court for the Parish of Jefferson, the aforesaid Judgment of the Illinois Court was filed and made executory here in Louisiana. Thereafter, pursuant to the Judgment, the Illinois Liquidator had two (2) bank accounts maintained *solely* in the name of the Kenilworth Insurance Company at the Jefferson Bank and Trust Company in Jefferson Parish,

Louisiana, seized by the Sheriff of the Parish of Jefferson, for transmittal to the Illinois Director of Insurance, in whom title and interest in said funds was vested by virtue of the Agreed Order of Liquidation with a Finding of Insolvency rendered by the Illinois Court and made executory in Louisiana.

Notwithstanding the specific injunction contained in paragraph G of the Illinois Court's Order, made applicable and executory in Louisiana, on April 26, 1982, Organ and Company, Inc., a Louisiana corporation, sought and obtained a temporary restraining order which prohibited the Sheriff of the Parish of Jefferson from releasing the funds seized and in his possession to the Illinois Director of Insurance, as Liquidator of the Kenilworth Insurance Company. Organ and Company's petition alleged that it was the Managing General Agent of Kenilworth Insurance Company in Louisiana and that, in essence, the funds seized belonged to a claims fund established in Kenilworth Insurance Company's name to pay various claims. Organ and Company asserted that because of negotiations between it and Kenilworth, the funds seized belonged to it rather than to Kenilworth Insurance Company. At the hearing held May 26, 1982 on Organ and Company's request for a preliminary injunction, the trial court held that it was of the opinion that although the Illinois Judgment was made executory in Louisiana, the full faith and credit clause of the United States Constitution did not preclude Organ and Company from instituting and pursuing its action in Louisiana to contest the Illinois Director's right, title and interest to the subject funds held in the name of the Kenilworth Insurance Company, and did not preclude the Louisiana trial court from inquiring into and ruling upon the substantive merits of Organ and Company's claim to the funds. The Illinois Director of Insurance, who sought

release of the funds, maintained that, by application of the full faith and credit clause of the United States Constitution to the Illinois Court's Judgment, (paragraph G thereof), now made executory and applicable in Louisiana, Organ and Company was precluded from asserting its claims in, and seeking to recover the subject funds in, a Louisiana judicial proceeding; but instead should be required, under the injunction, to assert any claims it may have to the subject funds in the Liquidation proceedings presently pending before the Illinois Court. On May 26, 1982, a preliminary injunction was issued in favor of Organ and Company prohibiting the Illinois Director of Insurance from having the subject funds of Kenilworth Insurance Company delivered to him, as Liquidator, notwithstanding the specific provisions of the Illinois Court Judgment to the contrary.

On May 28, 1982, the Illinois Director of Insurance, in his capacity as the Liquidator of Kenilworth Insurance Company, petitioned for and was granted an appeal. Subsequently, on June 11, 1982, Organ and Company filed in the aforesaid Louisiana district court a formal intervention seeking recall of the seizure, as well as to be declared the owner of the subject funds maintained in the name of Kenilworth Insurance Company, and also sought damages and attorney's fees against the Illinois Liquidator for unlawful seizure.

The Louisiana Fifth Circuit Court of Appeals, in a decision rendered March 8, 1983, held that the Illinois Court had no personal jurisdiction to bind Organ and Company by its Order of Liquidation issued on April 20, 1982 and, therefore, affirmed and remanded the case to the District Court. A determination was suggested in the Court of Appeals Opinion that the Illinois Court lacked

jurisdiction to render its Order of Liquidation affecting assets, or claims against assets, in the name of Kenilworth Insurance Company located in Louisiana bank accounts. The Director-Liquidator filed an application for rehearing of the aforesaid March 8, 1983 decision of the Louisiana Fifth Circuit Court of Appeals, which application for rehearing was denied on April 18, 1983. Application for Writ of Certiorari or Review was filed with the Supreme Court of the State of Louisiana on May 16, 1983. On June 17, 1983, the application for Writ of Certiorari or Review was denied by the Supreme Court of the State of Louisiana in a 5-2 decision.

### REASONS FOR GRANTING THE WRIT

As previously observed by this Court in a very similar matter, this case also "...presents a substantial question under the Full Faith and Credit Clause (Article IV, § 1) of the Constitution." *Morris v. Jones, Director of Insurance of Illinois*, 329 U.S. 545 (1947); 67 S.Ct. 451 at p. 453 (Douglas, J.).

The United States Constitution, Article IV § 1, provides in pertinent part that:

"Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

United States Code, Title 28, § 1738, provides in relevant part as follows:

"...The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts

within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form. Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

The record in this case clearly indicates that there has never been any question regarding the validity of the Illinois Court's jurisdiction over the liquidation proceedings concerning the subject Illinois corporation, Kenilworth Insurance Company. The Order entered on April 20, 1982 by the Circuit Court of Cook County, Illinois basically sought to achieve two main objectives in overseeing the subject liquidation proceedings: (1) pursuant to Illinois law, to vest title and control in the Illinois Director of Insurance, as Liquidator, over all of the assets held in the name of the Kenilworth Insurance Company, and (2) to provide for a single judicial forum wherein any and all claims on behalf of, or against, Kenilworth Insurance Company could be asserted and reviewed, thereby avoiding a potential duplication of efforts or conflicting disposition of claims throughout the fifty states.

In Jefferson Parish, Louisiana, two (2) bank accounts were maintained solely in the name of Kenilworth Insurance Company. The Illinois Judgment was made executory in accordance with the prerequisites of Louisiana law and the full faith and credit clause of the United States Constitution. Thereafter, the funds in those accounts were duly seized pursuant to the Judgment made executory and were placed in the custody of the Sheriff of the Parish of Jefferson. The

transmittal of the funds by the Sheriff to the Illinois Director of Insurance, as Court-appointed Liquidator for the Kenilworth Insurance Company, was blocked by a temporary restraining order obtained by Organ and Company, and subsequently by preliminary injunction, due to allegations by Organ and Company that it had claims to the subject funds. The applicant herein, the Illinois Director of Insurance and Liquidator of the Kenilworth Insurance Company, has consistently urged the Courts below that the sole issue before the Louisiana Courts should be whether, under the full faith and credit mandate of the United States Constitution, any substantive claims against the Kenilworth Insurance Company and/or funds held in its name should be asserted and adjudicated in the Company's liquidation proceedings presently pending before the Illinois Court, as opposed to this attempt to ignore the Order of the Illinois Court (made executory and applicable here) and instead litigate such claims in Louisiana.

Applicant respectfully submits that the recent decision of the United States Supreme Court in *Underwriters National Assurance Company v. North Carolina Life and Accident and Health Insurance Guaranty Association, et al.*, 102 S.Ct. 1357, 455 U.S. 691, 71 L.Ed.2d 558 (1982), as well as its decision in *Morris v. Jones, Director of Insurance of Illinois, supra*, are clearly applicable to and controlling of the instant case and the issue presented.

The Louisiana Court of Appeal below, in the third to last sentence of its decision, concluded that "the Illinois Court had no personal jurisdiction to bind Organ and Company by its Order" and, therefore, seemed to suggest that because Organ and Company wished to assert its claims against funds held in bank accounts here in the name of the Kenilworth Insurance Company, that full faith and credit should not be

accorded to the Illinois Judgment which requires all claims against Kenilworth Insurance Company to be asserted in the Illinois liquidation proceedings.

Following such logic to its ultimate conclusion, the entire concept and purpose of the full faith and credit clause could be easily subverted and rendered useless whenever someone wishes to ignore the mandate of a valid judgment rendered in a sister state, and instead proceed in another forum more convenient to it for the assertion of certain claims. This approach, as seemingly countenanced by both the District and Appellate Courts below, would not only violate the clear intent of the full faith and credit clause but, as a practical matter, would thwart the ability of the Illinois Court or any State's court to control liquidation proceedings involving both a subject matter as well as an entity over which it clearly has jurisdiction.

It also directly conflicts with the fundamental rule of law as recognized by this Court in *Morris, supra*:

" 'A judgment of a Court having jurisdiction of the parties and of the subject matter operates as res judicata, in the absence of fraud or collusion, even if obtained upon a default.' *Riehle v. Margolies, supra*, 279 U.S. at page 225, 49 S.Ct. at page 313, 73 L.Ed. 669. Such a judgment obtained in a sister State is, with exceptions not relevant here, see *Williams v. State of North Carolina*, 317 U.S. 287, 294, 295, 63 S.Ct. 207, 211, 87 L.Ed. 277, 143 A.L.R. 1273, entitled to full faith and credit in another State, though the underlying claim would not be enforced in the State of the forum. (citing authorities)" *Morris, supra*, 329 U.S. at pp. 550-551; 67 S.Ct. at pp. 455-456.

The actions of the Louisiana Courts below further conflict

with and ignore this Court's most recent decision rendered last year in *Underwriters National Assurance Company*, *supra*:

"A concept of full faith and credit is central to our system of jurisprudence. Ours is a union of States, each having its own judicial system capable of adjudicating the rights and responsibilities of the parties brought before it. Given this structure, there is always a risk that two or more States will exercise their power over the same case or controversy, with the uncertainty, confusion and delay that necessarily accompanies relitigation of the same issue. See *Sherrer v. Sherrer*, 334 U.S. 343, 355, 92 L.Ed. 1429, 68 S.Ct. 1087, 1 A.L.R.2d. 1355 (1948); *Riley v. New York Trust Co.*, 315 U.S. 343, 348-49, 86 L.Ed. 885, 62 S.Ct. 608 (1942). Recognizing that this risk of relitigation inheres in our federal system, the Framers provided that 'Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State' U.S. Const., Art. IV § 1. This Court has consistently recognized that, in order to fulfill this constitutional mandate, 'the judgment of a state court should have the same credit, validity and effect, in every other court of the United States, which it had in the state where it was pronounced.' *Hampton v. McConnel*, 3 Wheat 234, 235, 4 L.Ed. 378 (1818) (Marshall, C.J.); *Riley v. New York Trust Co.*, *supra*, at 353, 86 L.Ed. 885, 62 S.Ct. 608.

[2] To be sure, the structure of our nation as a union of States, each possessing equal sovereign powers, dictates some basic limitations on the full-faith-and-credit principles enumerated above. Chief among these limitations is the caveat, consistently recognized by this Court, that 'a judgment of a court in one State is conclusive upon the merits in a court in another State only if the court in the first



State had power to pass on the merits—had jurisdiction, that is, to render the judgment.' *Durfee v. Duke*, 375 U.S. 106, 110, 11 L.Ed.2d 186, 84 S.Ct. 242 (1963). Consequently, before a court is bound by the judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court's decree. If that court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given. See *Nevada v. Hall*, 440 U.S. 410, 421, 59 L.Ed.2d 416, 99 S.Ct. 1182 (1979)." (see *Underwriters*, *supra*, 455 U.S. at pp. 703,705; 71 L.Ed.2d at pp. 570-571)

There is no dispute whatsoever in this case as to whether the Illinois Court had jurisdiction over (1) the subject matter (i.e., the insolvency/liquidation proceedings of an Illinois stock property and casualty company, the Kenilworth Insurance Company and its assets and (2) the parties (i.e., the Director of Insurance of the State of Illinois and the Kenilworth Insurance Company, an Illinois Stock Property and Casualty Company).

Simply stated, in view of the liquidation proceedings affecting bank accounts held in the name of the Kenilworth Insurance Company, an Illinois stock property and casualty company which were legally and validly instituted in Illinois, the full faith and credit clause of the United States Constitution and the jurisprudence interpretive thereof mandates that full faith and credit be given by the Courts of Louisiana to the judicial Order issued by Courts of its sister state, Illinois, decreeing:

*"That all persons be and are hereby enjoined and restrained from asserting any claim against the Director, as Liquidator, arising out of or in connection with these liquidation proceedings, or the Company, except insofar as such claims are brought in*

*the liquidation proceedings of the Company.*" (emphasis added)

(see, *People of the State of Illinois ex rel Philip R. O'Connor, Director of Insurance for the State of Illinois v. Kenilworth Insurance Company, an Illinois Stock, Property and Casualty Co.*, "AGREED ORDER OF LIQUIDATION WITH A FINDING OF INSOLVENCY", In the Circuit Court of Cook County, Illinois, County Department, Chancery Division, No. 82 CH 3081, page 3, paragraph F)

Accordingly, any claims which Organ and Company, or any other party, has or may have against Kenilworth Insurance Company, In Liquidation, or against any assets held in the name of the Kenilworth Insurance Company, should be asserted in the liquidation proceedings of that Company now pending before the Circuit Court of Cook County, Illinois, in accordance with the Order of the Illinois Court, and especially where, as in this case, the Illinois judgment has already been made executory in Louisiana.

For the foregoing reasons, applicant, the Honorable Philip R. O'Connor, Director of Insurance for the State of Illinois and Court-appointed Liquidator of the Kenilworth Insurance Company, In Liquidation, respectfully urges that the Supreme Court of the United States, in accordance with the full faith and credit clause of the United States Constitution, and the jurisprudence interpretive thereof, reverse the decision of the Supreme Court of the State of Louisiana and direct that the preliminary injunction issued by the District Court be dissolved; that the funds which were held in the two (2) bank accounts in the name of the Kenilworth Insurance Company which were seized by the Sheriff of the Parish of Jefferson pursuant to the Judgment of the Illinois Court, and made executory in Louisiana, be released to the Court-

appointed Liquidator, the Illinois Director of Insurance; and, further, that any and all claims which Organ and Company, or any other party, has or may have against such funds be asserted in the liquidation proceedings of the Kenilworth Insurance Company currently pending before the Circuit Court of Cook County, Illinois in proceedings numbered 82 CH 3081 on the docket of that Court.

### CONCLUSION

To hold that the judicial disposition of assets held in Louisiana in the name of Kenilworth Insurance Company, an Illinois corporation, was not subject to the jurisdiction of the Illinois Court's liquidation proceedings for that Company, and to refuse to require that any substantive claims in this matter be litigated before the Illinois Court in the subject liquidation proceedings, disregarded not only the injunction of its sister state, Illinois, and made executory in Louisiana, but also the letter as well as the spirit and intent of the full faith and credit clause of the United States Constitution.

For these reasons and facts involving the disregard of a fundamental Federal Constitutional mandate, as well as the rule of law recently reiterated by this Honorable Court in the *Underwriters National Assurance Company* decision, *supra*, the Court is respectfully urged to grant the Writ sought herein.

Respectfully submitted:

BACH & WASSERMAN  
Attorneys for Petitioner

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Sidney M. Bach

## CERTIFICATE OF SERVICE

This is to certify that the undersigned is a member in good standing of the Bar of the Supreme Court of the United States of America, and that copies of the Petition for Writ of Certiorari have been served upon opposing counsel, Felicien P. Lozes, Esq., by placing copies of the Petition in the United States Mail, properly addressed and postage prepaid.

New Orleans, Louisiana, this 21 day of July,  
1983.

Respectfully submitted:

BACH & WASSERMAN  
Attorneys for Petitioner

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**APPENDIX "A"**

IN THE CIRCUIT COURT OF  
COOK COUNTY, ILLINOIS COUNTY DEPARTMENT,  
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS  
ex rel. PHILIP R. O'CONNOR  
DIRECTOR OF INSURANCE FOR THE  
STATE OF ILLINOIS,

Plaintiff,

-vs-

No.: 82 CH 3081

KENILWORTH INSURANCE COMPANY,  
an Illinois Stock Property and  
Casualty Company,

Defendant.

AGREED ORDER OF LIQUIDATION  
WITH A FINDING OF INSOLVENCY

THIS CAUSE COMING ON TO BE HEARD upon plaintiff's Complaint for Liquidation with a Finding of Insolvency and plaintiff's motion for judgment thereon, the Court having jurisdiction over the parties and the subject matter, the parties being represented in court by counsel, the Court having examined the pleadings and other matters of record herein, and having considered the arguments of counsel and being otherwise fully advised in the premises, and good cause appearing therefor,

The Court finds as follows:

1. By his complaint, the Director of Insurance for the State of Illinois ("Director") seeks an order of liquidation

with a finding of insolvency against defendant Kenilworth Insurance Company ("the Company") pursuant to Ill.Rev.State. ch. 73, §800;

2. By its consent to the entry of this agreed order the Company has admitted that it was insolvent and the allegations of the Verified Petition for Conservation of Assets and Injunctive Relief filed April 15, 1982, were true; and the Company has admitted that the allegations in the verified petition for liquidation filed April 20, 1982 were true;

3. The Company has failed to demonstrate any grounds upon which this Court could conclude that such consent was invalid when given or should not be binding on the Company now, and such consent is, therefore, binding upon the Company;

4. The Company is insolvent;

5. The Director believes that it is in the best interests of the Company, its policyholders, creditors and the public, to liquidate the Company;

6. The Court therefore concludes as a matter of law that sufficient cause exists for the entry of an order of liquidation with a finding of insolvency.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. That sufficient cause exists for the liquidation of defendant Kenilworth Insurance Company ("Company"), that the Company is insolvent and that an Order of Liquidation with a finding of insolvency be and is hereby

entered against the Company.

B. That Philip R. O'Connor, Director of Insurance of the State of Illinois and his successors in office ("Director") be and they are hereby authorized and directed to immediately take possession of the property, business and affairs of the Company as liquidator and to liquidate the business and affairs of the Company pursuant to the provisions of Article XIII of the Illinois Insurance Code (Ill. Rev. Stat. ch. 73, Sections 800-833), and to take such action as the nature of this cause and the interests of the policyholders, creditors, stockholders or the public may require subject to further order of this Court, and that the Director be and is hereby vested as Liquidator with title to all property, contracts, and rights of action of the Company and he is hereby authorized to deal with the property, business and affairs of the Company and to sue and defend for the Company, or for the benefit of the Company's policyholders, shareholders and creditors in the courts and tribunals, agencies or arbitration panels of this State and other states in his name as Director of Insurance of the State of Illinois, or in the name of Kenilworth Insurance Company.

C. That the Director has the right, title and interest in all funds recoverable under treaties and agreements of reinsurance heretofore entered into by the Company as the ceding insurer, and that all reinsurance companies involved with the Company be and the same hereby are restrained from making any settlements with any claimant or policyholder other than the Director as Liquidator.

D. That all banks, brokerage houses, agents, reinsurers or other companies or persons having in their possession assets which are or may be the property of the

Company are enjoined from disposing of such assets or destroying any records pertaining to any business transaction between the Company and banks, brokerage houses or other persons or companies having done business with the Company or having in their possession assets which are or were the property of the Company.

E. That all agents and brokers of the Company are enjoined from returning any unearned premiums, or any money in their possession collected for premiums or enrollment contributions to policyholders (subscribers) and that said agents and brokers are directed to turn over all such funds in their possession to the Director of Insurance of the State of Illinois.

F. That all persons be and are hereby enjoined and restrained from asserting any claim against the Director, as Liquidator, arising out of or in connection with these liquidation proceedings, or the Company, except insofar as such claims are brought in the liquidation proceedings of the Company.

G. That all persons, including policyholders of the Company and all persons asserting claims against such policyholders, be and are hereby enjoined from instituting or pursuing any action or proceeding in any court or before any administrative agency, including boards, commissions, panels or other tribunals administering workmen's compensation, occupational diseases, malpractice, arbitration or similar laws of the State of Illinois or of any other state or of the United States, which seeks in any way, directly or indirectly to contest or interfere with the Director's exclusive right, title and interest to funds, recoverable under treaties and agreements of reinsurance heretofore entered into by the Company as the ceding insurer, or otherwise.



H. That hereafter the caption of this cause and all pleadings in this matter shall read as:

IN THE MATTER OF THE LIQUIDATION  
OF KENILWORTH INSURANCE COMPANY

I. That the Director is hereby authorized to pay the administrative expenses incurred during the course of conservation, and liquidation including but not limited to attorneys fees, accounting fees and consulting fees, as administrative expenses under Section 205.1(a) of the Insurance Code (Ill. Rev. Stat. ch. 73, sec. 817), subject to the approval of this Court, and to pay claims settled by the Director with approval of this Court prior to the entry of this Order.

J. That the Director is hereby authorized to wind-down and terminate the Company's business in an orderly manner, and to continue to expend such wages, rents and other expenses as are necessary, and to expend such expenses as shall be necessary to obtain financial information and data processing services.

K. That this Court shall retain jurisdiction in this cause for the purpose of granting such other and further relief in this cause as the interests of the policyholders, creditors, stockholders or the public may require.

ENTER: Clerk of the Circuit Court  
Morgan M. Finley

DATED: APR 20, 1982

EPTON, MULLIN, SEGAL & DRUTH, LTD.  
140 South Dearborn Street  
Chicago, Illinois 60603  
312/984-1000

APPENDIX "B"

24TH JUDICIAL DISTRICT COURT  
FOR THE PARISH OF JEFFERSON  
STATE OF LOUISIANA

NO. 266076

DIVISION

IN THE MATTER OF THE LIQUIDATION  
OF KENILWORTH INSURANCE COMPANY

Filed: April 23, 1982

\_\_\_\_\_  
Deputy

PETITION TO MAKE JUDGMENT EXECUTORY

Philip R. O'Connor, Director of Insurance for the State of Illinois, the duly appointed liquidator of the Kenilworth Insurance Co., as per certified copy of judgment annexed hereto, the provisions of which are incorporated here by reference, respectfully petitions this Honorable Court pursuant to the full faith and credit clause of the United States Constitution and the applicable laws of the State of Louisiana, to recognize and give faith and credit to the certified judgment annexed hereto and to make same executory and applicable in all its terms and respects.

BACH & WASSERMAN

BY: /S/SIDNEY BACH

SIDNEY BACH

BY: /S/GERALD  
WASSERMAN

GERALD WASSERMAN  
Attorneys for Petitioner  
Security Homestead Building  
221 Carondelet St.  
New Orleans, Louisiana 70130

Of Counsel

Lawrence Berman Esq.  
Joel Birnbaum Esq.

BY: /S/JOEL BIRNBAUM

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Court-appointed Attorneys for  
the Liquidator

Chicago, Illinois

ORDER

Considering the foregoing petition to make Judgment Executory, It is hereby ordered, adjudged and decreed that the duly certified judgment rendered in the matter entitled "In the Matter of the Liquidation of Kenilworth Ins. Co.", dated April 20, 1982, bearing docket No. 82CH3081 on the docket of the circuit court, County of Cook, State of Illinois, be granted full faith and credit by this court and that same be made executory in all its terms, conditions, provisions and commands to any and all parties referred to therein including but not limited to the Jefferson Bank & Trust Co. reference any and all accounts of the Kenilworth Insurance Co. and in particular that account number 120260-82.

Gretna, Louisiana, this 23rd day of April, 1982.

/S/ THOMAS C. WICKER

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JUDGE

APPENDIX "C"

24TH JUDICIAL DISTRICT COURT  
FOR THE PARISH OF JEFFERSON  
STATE OF LOUISIANA

NO. 266-076

DIVISION "A"

IN THE MATTER OF THE LIQUIDATION OF  
KENILWORTH INSURANCE COMPANY

FILED: May 26, 1982

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DEPUTY CLERK

JUDGMENT

This matter came on for hearing on May 17, 1982.

PRESENT: SIDNEY M. BACH of BACH &  
WASSERMAN, Attorneys for the Liquidator

FELICIEN P. LOZES of LOZES & LOZES, At-  
torneys for Organ & Company, Inc.

When, after hearing the evidence and the argument of counsel, the Court being of the opinion that the judgment rendered by the Circuit Court of Cook County, Illinois, in the matter entitled "*People of the State of Illinois ex rel. Philip R. O'Connor, Director of Insurance for the State of Illinois vs. Kenilworth Insurance Company, an Illinois Stock Property and Casualty Company*" bearing No. 82 CH 3081 on the docket of that Court and made executory herein does not preclude this Court from entertaining and ruling upon the merits of the claims asserted on behalf of Organ & Company, Inc. regarding the proceeds seized by the Sheriff of Jefferson Parish from the account of Kenilworth Insurance Company pursuant to prior orders of this Court;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Sheriff for the Parish of Jefferson be and the same is hereby preliminarily enjoined from releasing any funds seized by his office from the account of Kenilworth Insurance Company pursuant to prior orders issued by this Court and that the Director of Insurance for the State of Illinois as Liquidator in the above referenced Illinois liquidation proceedings be similarly preliminarily enjoined from obtaining the release of said funds previously seized at its behest.

JUDGMENT RENDERED ON MAY 17, 1982 IN  
GRETNA, LOUISIANA SIGNED IN OPEN COURT AT  
GRETNA, LOUISIANA ON THIS 26TH DAY OF MAY,  
1982.

/S/ILLEGIBLE

5-26, 1982

I, hereby certify that all  
costs incurred in this matter  
have been paid.

Deputy Clerk

FIFTH CIRCUIT

STATE OF LOUISIANA

"A", No. 266-076

HONORABLE ROY L. PRICE, JUDGE

LAWRENCE A. CHEHARDY  
JUDGE

MAR 8 1983

(Court composed of Judges Lawrence A. Chehardy, Nestor L. Currault, Jr. and Edward A. Dufresne, Jr.)

BACH & WASSERMAN  
SIDNEY M. BACCH  
221 CARONDELET STREET  
NEW ORLEANS, LOUISIANA 70130  
for PHILIP R. O'CONNOR, Director of Insurance for  
the State of Illinois—Liquidator of Kenilworth  
Kenilworth Insurance Company, appellant.

LOZES AND LOZES  
FELICIEN P. LOZES  
1010 COMMON STREET  
SUITE 850  
NEW ORLEANS, LOUISIANA 70112  
for Organ & Company, Inc., intervenor-appellee.

AFFIRMED AND REMANDED.

This case is before us on appeal from the granting of a preliminary injunction, enjoining the release of funds seized pursuant to an Illinois judgment. That judgment had been recognized by the 24th Judicial District Court pursuant to LSA-C.C.P. art. 2541.<sup>1</sup> We affirm the preliminary injunction for the reasons set forth below.

By order of the Circuit Court of Cook County, Illinois, dated April 20, 1982, Kenilworth Insurance Company was found insolvent and was ordered to be liquidated. The Director of Insurance for the State of Illinois was made liquidator and was ordered to take possession of the property, business and affairs of the company. The judgment also provided, in pertinent part:

"C. That the Director has the right, title and interest in all funds recoverable under treaties and agreements of reinsurance heretofore entered into by the Company as the ceding insurer, and that all reinsurance companies involved with the Company be and the same hereby are restrained from making any settlements with any claimant or policyholder other than the Director as Liquidator.

"D. That all banks, brokerage houses, agents, reinsurers or other companies or persons having

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<sup>1</sup> C.C.P. art. 2541:

"A party seeking recognition or execution by a Louisiana court of a judgment or decree of a court of the United States or a territory thereof, or of any other state, or of any foreign country must bring an ordinary proceeding against the judgment debtor in the proper Louisiana court, to have the judgment or decree recognized and made the judgment of the Louisiana court.

"A duly authenticated copy of the judgment or decree must be annexed to the petition."

in their possession assets which are or may be the property of the Company are enjoined from disposing of such assets or destroying any records pertaining to any business transaction between the Company and banks, brokerage houses or other persons or companies having done business with the Company or having in their possession assets which are or were the property of the Company.

"E. That all agents and brokers of the Company are enjoined from returning any unearned premiums, or any money in their possession collected for premiums or enrollment contributions to policyholders (subscribers) and that said agents and brokers are directed to turn over all such funds in their possession to the Director of Insurance of the State of Illinois.

"F. That all persons be and are hereby enjoined and restrained from asserting any claim against the Director, as Liquidator, arising out of or in connection with these liquidation proceedings, or the Company, except insofar as such claims are brought in liquidation proceedings of the Company.

"G. That all persons, including policyholders of the Company and all persons asserting claims against such policyholders, be and are hereby enjoined from instituting or pursuing any action or proceeding in any court or before any administrative agency, including boards, commissions, panels or other tribunals administering workmen's compensation, occupational diseases, malpractice, arbitration or similar laws of the State of Illinois or of any other state or of the United States, which seeks in any way, directly or indirectly to contest or interfere with the Director's exclusive right, title and interest to funds,



recoverable under treaties and agreements of re-insurance heretofore entered into by the Company as the ceding insurer, or otherwise."

That judgment was entered in the Illinois Court on April 20, 1982, and was made executory in Louisiana on April 23, 1982 upon petition of the liquidator. Pursuant thereto, two bank accounts in the name of Kenilworth Insurance Company at Jefferson Bank & Trust Company were seized by the Jefferson Parish sheriff.

On April 26, 1982, Organ & Company, Inc., a Louisiana corporation, petitioned for a temporary restraining order prohibiting the sheriff from releasing the funds in his possession. Organ's petition alleged it was managing general agent of Kenilworth Insurance Company, that the seized bank accounts comprised a claims fund established in Kenilworth's name to pay claims, and that Organ was signatory to these accounts. Organ further alleged that because Kenilworth had failed to deposit sufficient funds in the accounts, Organ had negotiated with Kenilworth to reinsure Kenilworth's risks, and had deposited funds in the accounts to cover claims made against Kenilworth's insureds. As a result, Organ's petition contended, all the funds seized had been deposited by Organ and none of the funds belonged to Kenilworth.

The temporary restraining order was granted and a hearing on the request for preliminary injunction was set. On the same day the temporary restraining order was signed, the liquidator for Kenilworth filed a motion to release the funds (which totalled \$37,456.46). This motion was deferred to the hearing on the preliminary injunction.

At the hearing on the preliminary injunction, the

liquidator presented testimony of Deborah Tyler, an attorney in the firm handling the liquidation. The intervenor presented testimony of Donald V. Organ, president of Organ & Company. Copies of the original Illinois judgment and of documents relating to the contractual agreements between Kenilworth and Organ were filed as exhibits.

In his May 26, 1982 judgment granting the preliminary injunction, the trial judge stated he was of the opinion that the Illinois judgment, although made executory in Louisiana, did not preclude the Louisiana court from ruling on the merits of Organ's claim.

The liquidator thereafter petitioned for and was granted an appeal. Subsequently, Organ filed a formal intervention, seeking (1) recall of the writ of fieri facias under which the funds were seized; (2) to be adjudged the owner of the funds; and (3) damages and attorney's fees for unlawful seizure.

Some of the testimony in the record (admitted over the objection of the liquidator's attorney) went to the merits of Organ & Company's claim to the seized funds. That issue is not before us now, however. The only question we may properly consider is whether Organ made a prima facie showing that the Illinois judgment is not entitled to full faith and credit in Louisiana against Organ.

A preliminary injunction is a procedural device, interlocutory in nature, designed to preserve the existing status pending a trial of the issues on the merits of the case. Even though the hearing on the summary proceedings to obtain the preliminary injunction may touch upon or tentatively decide merit issues, the principal demand is determined on its merits only after a full trial

under ordinary process. This rule is subject to the exception that, if the parties have expressly agreed to submit the case for final decision at the hearing on the rule for a preliminary injunction, the ruling on the preliminary injunction may definitively dispose of the merit issues. *Smith v. West Virginia Oil & Gas Co.*, 373 So. 2d 488 (La. 1979), and cases cited therein.

The applicant for a preliminary injunction need make only a *prima facie* showing he will prevail on the merits. The preliminary injunction requires less proof than is required in an ordinary proceeding for permanent injunction. See *General Motors Acceptance Corp. v. Daniels*, 377 So.2d 346 (La. 1979).<sup>1</sup>

There are really two merit issues eventually to be decided in this case. The first is whether the Illinois judgment is entitled to full faith and credit in Louisiana. If it is, then the liquidator will be allowed to marshal the funds seized in Louisiana into Illinois, and Organ will be forced to litigate its claim in the Illinois liquidation proceeding. If the Illinois judgment is not entitled to full faith and credit in Louisiana, then Organ may continue with its suit here. The second merit issue, of course, is Organ's entitlement to the funds.

The full-faith-and-credit issue is clearly the threshold to be crossed before ownership claims can be considered. We conclude the only question on which Organ needed to make a *prima facie* showing to obtain the preliminary

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<sup>1</sup> There is no merit to Organ's contention before this court that this appeal is premature. It is true a preliminary injunction is an interlocutory judgment, but LSA-C.C.P. art. 3612 allows appeals of right from preliminary injunctions. This article is an exception to the general rule that no appeals may be taken from interlocutory judgments. See *State ex rel. Guste v. City of New Orleans*, 363 So.2d 678 (La. 1978).

injunction was whether the Illinois judgment is entitled to full faith and credit. And, because there was no stipulation that the parties desired the preliminary injunction rule to dispose of the merits, we will limit our consideration to whether the evidence was sufficient for a *prima facie* showing.

In *Underwriters Nat. Assur. v. N. C. Life & Acc., Etc.*, 102 S.Ct. 1357, — U.S. —, 71 L.Ed.2d 558 (1982), the Supreme Court held that a judgment of a court in one state is conclusive upon the merits in a court in another state only if the court in the first state had power to pass on the merits, that is, had jurisdiction to render judgment. Consequently, said the Supreme Court, before a court is bound by the judgment rendered in another state, it may inquire into the jurisdictional basis of the foreign court's decree. If that court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given.

The Supreme Court stated that a judgment is entitled to full faith and credit—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment. See also *Durfee v. Duke*, 84 S.Ct. 242, 375 U.S. 106, 11 L.Ed.2d 186 (1963).

A state court judgment need not be given full faith and credit by other states as to parties or property not subject to the jurisdiction of the court. *W. U. Tel. Co. v. Com. of Pa.*, by *Gottlieb*, 82 S.Ct. 199, 368 U.S. 71, 7 L.Ed.2d 139 (1961).

In the case before us, Donald Organ testified he never received any notice of the seizure of the bank

accounts, and that he has never been cited to appear in any court to assert his company's ownership rights to the funds, although the accounts were maintained in Kenilworth's name by agreement between the parties and Kenilworth knew of and approved Organ's deposit of Organ's own funds in it.

Deborah Tyler, witness for the liquidator, testified she was not aware that Organ had never been notified that the accounts would be frozen. As far as we knew, the Illinois court had not issued any service, citation or other process in connection with the funds.

The Illinois judgment itself recites that the court had "jurisdiction over the parties and the subject matter," but it is clear the "parties" intended thereby were only the plaintiff in the liquidation proceedings ("People of the State of Illinois ex rel. Philip R. O'Conner, Director of Insurance for the State of Illinois") and the defendant, Kenilworth Insurance Company.

These facts alone might not be sufficient to constitute the "clear and convincing proof" required to rebut the presumption that the sister state had valid jurisdiction to render the judgment. See *Prairie Finance, Inc. v. Perry*, 389 So.2d 1131 (La. App. 3d Cir. 1980); *Holden v. Holden*, 374 So.2d 749 (La. App. 3d Cir. 1979). They are sufficient, however, to establish the prima facie showing necessary to grant the preliminary injunction. On their face, these facts indicate the Illinois court had no personal jurisdiction to bind Organ & Company by its order.

For the foregoing reasons, the judgment of the district court is affirmed, and the case is remanded for further proceedings according to law. Appellant is to pay all

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costs of this appeal.

AFFIRMED AND REMANDED.

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**APPENDIX "E"**

**COURT OF APPEAL, FIFTH CIRCUIT  
STATE OF LOUISIANA**

Clerk's Office, Gretna, April 18, 1983

DEAR SIR:

REHEARING WAS THIS DAY REFUSED IN THE  
CASE ENTITLED

IN THE MATTER OF THE LIQUIDATION OF  
KENILWORTH INSURANCE CO.

No. 82 CA 93

Very truly yours,

ASWARD P. THERIOT, Clerk

APPENDIX "F"

IN THE MATTER OF THE LIQUIDATION  
OF KENILWORTH INSURANCE COMPANY

NUMER 83-C-1067

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In Re: Hon. Philip R. O'Connor, Director of Insurance for the State of Illinois an Court-Appointed Liquidator of the Kenilworth Insurance Company; applying for Writ of Certiorari, or Writ of Review to the Court of Appeal Fifth Circuit, Number 82-CA-93; from the 24th Judicial District Court Parish of Jefferson Number 266-076, Division A.

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June 17, 1983

Denied.

HTL  
JAD  
PFC  
WFM  
JCW

DENNIS and BLANCHE, J.J., would grant the writ.

Supreme Court of Louisiana  
June 17, 1983

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Clerk of Court  
For the Court



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